

DALE BERNARD BEARD, JR. v.
DANIEL E. SMITH, et al.

LIEUTENANT ADAM P. ALBAUGH
August 29, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG

* * * * *

DALE BERNARD BEARD, JR.,
Plaintiff,

v. CIVIL ACTION NO. 3:23-CV-193
Honorable Gina Groh

DANIEL E. SMITH, Individually, and
ADAM ALBAUGH, Individually,
Defendants.

* * * * *

Deposition of LIEUTENANT ADAM P. ALBAUGH, a
Defendant herein, taken on behalf of the Plaintiff,
in the above-entitled action, pursuant to Notice,
before Sheryl L. Gasparik, Registered Professional
Reporter, and Notary Public within and for the State
of West Virginia, held at the law firm of Pullin,
Fowler, Flanagan, Brown & Poe, PLLC, 261 Aikens Center,
Suite 301, Martinsburg, West Virginia 25404, on the
29th day of August, 2024, commencing at 3:09 p.m.

REALTIME REPORTERS, LLC
713 Lee Street
Charleston, WV 25301
(304) 344-8463
realtimereporters.net

Realtime Reporters, LLC
schedulerealttime@gmail.com 304-344-8463

Exhibit D

DALE BERNARD BEARD, JR. v.
DANIEL E. SMITH, et al.

LIEUTENANT ADAM P. ALBAUGH
August 29, 2024

1 if you guys are. Where did we leave off?

2 (Preceding question read back by the reporter.)

3 BY MR. BRYAN:

4 Q. What was -- I think I know this, but what was
5 significant to you about the ziplock bag with whatever
6 was in it? Why did you pull it out?

7 A. Well, I was searching the bag, so I was pulling
8 all the contents out.

9 Q. Well, why did you pull it out and then also
10 not put it back in?

11 A. I believed it was marijuana wax.

12 Q. What is marijuana wax?

13 A. Marijuana wax is a THC extracted from the
14 flower through a chemical base. It creates a higher
15 potency.

16 Q. So did you believe that that, in and of itself,
17 was consistent with marijuana that you could charge
18 Mr. Beard for?

19 A. Yes.

20 Q. So how then would you go about proving whether
21 or not it was what you thought it was?

22 A. Confirmatory test at the lab.

23 Q. And was that ever done?

24 A. Not by me.

DALE BERNARD BEARD, JR. v.
DANIEL E. SMITH, et al.

LIEUTENANT ADAM P. ALBAUGH
August 29, 2024

1 Q. And as we sit here today, you don't have any
2 specific knowledge as to why that particular bag was
3 not tested or sent for testing at the lab; you just
4 have general information on how you guys operated at
5 the time?

6 A. I have knowledge of why the case was ultimately
7 dismissed and not pursued via conversations with the
8 prosecutor's office that might apply to answer that
9 question.

10 Q. Okay, great. Tell me about that, please.

11 A. It is my understanding that when the white
12 powder came back as not a identifiable controlled
13 substance, the case was remanded back to the magistrate
14 court, and since Mr. Beard had been on bond for a long
15 time without messing up any -- I am paraphrasing here,
16 obviously -- that for judicial efficiency, they did not
17 want to pursue the case as the outcome of even a jury
18 trial in magistrate court would have resulted in a low
19 fine for the marijuana or the obstructing.

20 Q. But at that point, that was already after the
21 white powdery substance had already been sent to the
22 state police lab and tested; right?

23 A. That's correct.

24 Q. So, I mean, if you guys were going to test the